Wm. G. Smith, Incorporated. From the decree rendered, plaintiff appeals, defendant assigning cross-errors. Affirmed.

John T. Daniel, of Cape Charles, and *James E. Heath,* of Norfolk, for appellant.

Otho F. Mears, of Eastville, for appellee.

NORFOLK SOUTHERN R. CO. *v.* SMITH.

Jan. 24, 1918.

[94 S. E. 789.]

1. Railroads (§ 344 (1)*)—Demurrer—When Proper.—In view of Code 1904, § 3272, providing that on a demurrer the court shall not regard any defect, unless something essential has been omitted, so that judgment cannot be rendered, declaration in action for injuries at railroad crossing, which gave the date and place of the accident and such particulars as plainly informed defendant of every fact relied on by plaintiff which was essential to enable it to defend, and which charged negligence in several particulars and negligence under the last clear chance doctrine, was sufficient and not demurrable.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 595.]

2. Railroads (§ 351 (3)*)—Crossing Accidents—Burden of Proof—Contributory Negligence—Instructions.—In action for injuries to traveler at railroad grade crossing, instruction that burden of proving contributory negligence is upon defendant should have concluded, "unless such contributory negligence was disclosed by plaintiff's evidence, or could fairly be inferred from the circumstances."

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 407, 412.]

3. Railroads (§ 351 (3)*)—Crossing Accidents—Burden of Proof—Instructions.—In action for injury to traveler at grade crossing, when he drove on the track 50 feet ahead of an approaching train, it was error to refuse instruction that the law recognizes that nerves and muscles are not so co-ordinated that there can be instantaneous response, and that if the automobile was suddenly stopped on the track the jury should not find for plaintiff, unless he proved that in contemplation of the entire situation after the danger became known to the motorman, or ought to have been discovered by him by the exercise of ordinary care, he negligently failed to do something which he had a last clear chance to do to avoid the accident.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 412.]

4. Railroads (§ 348 (1)*)—Injuries to Persons—Crossing Accident—Evidence—Sufficiency.—In action for injuries to traveler at crossing, evidence held such that motion to set aside verdict for plaintiff as contrary to the law and the evidence should have been sustained.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 597.]

---

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Circuit Court, Princess Anne County.

Action by A. R. Smith against the Norfolk Southern Railroad Company. Judgment for plaintiff, and defendant brings error. Verdict set aside, judgment reversed, and cause remanded.

James G. Martin, of Norfolk, for plaintiff in error.

R. R. Hicks, and *W. R. L. Taylor,* both of Norfolk, for defendant in error.

HILL *v.* STARK et al.

Jan. 24, 1918.

[94 S. E. 792.]

1. Descent and Distribution (§ 93*)—"Advancement"—Essentials.—In general, two elements are essential to constitute an "advancement," a gift as distinguished from a transfer for valuable consideration by the parent to the child, and the intention of the donor that the gift shall be an advancement.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Advancement. For other cases, see 1 Va.-W. Va. Enc. Dig. 190, 191.]

2. Descent and Distribution (§ 109*)—Advancement—Essentials.—Where the mother employed her son as her agent and attorney in fact to control her interest in a partnership, according to his judgment, to receive for compensation the profits, and, if the mother died, her interest therein, including her contribution to the capital stock, to become the property of the son, but if he should die before her, the capital to go to the mother and the profits to the son's estate, in consideration of which the son agreed to pay interest on the original capital, the instrument contained all the elements of a contract executory, exhibiting no intention to create an advancement, and on the mother's death the son could not be compelled to bring into hotchpot the amount of the capital invested before being allowed to participate in the estate.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 192, 195.]

Sims, J., dissenting.

Appeal from Circuit Court, Culpeper County.

Bill by Adina Hill against J. C. Stark for himself and as administrator of Kate N. Stark, deceased, and others. Decree for defendants, and plaintiff appeals. Affirmed.

Edwin H. Gibson, of Culpeper, for appellant.

Grimsley & Miller, of Culpeper, for appellees.

---

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.